

BenAlert

BENEFIT TRENDS AND LEGISLATIVE UPDATES

DECEMBER 2008



Howitt Benefit Services is pleased to provide you with periodic updates on benefit trends and legislative updates. As part of our valuable services, we want to ensure that you are in compliance and well-informed of the ongoing changes in our industry.

In this BenAlert:

- The Bicycle Commuters Act

The Bicycle Commuters Act

As you know, the Emergency Economic Stabilization Act of 2008 (EESA) contained a number of additional unrelated pieces of legislation including the new Mental Health Parity Act (2008-21), Michelle's Law (to come), and the Bicycle Commuters Act. The purpose of this Memorandum is to provide you with a description of the Bicycle Commuters Act.

In Brief

Effective January 1, 2009, for expenses incurred on or after that date, federal law will allow employers to make bicycle commuting expense reimbursements under IRC Section 132(f) up to \$20.00 per month to employees who regularly commute to work by bicycle. Although this is the same section of the Internal Revenue Code as transit passes and parking, very different rules apply to the bicycle benefit.

Discussion

- 1. Employer-paid Benefit.** The bicycle benefit must be fully employer paid. Employees do not have the option to make pre-tax contributions. IRC Section 132(f) exempts qualified reimbursements from income taxation.
- 2. Qualified Bicycle Expenses.** The employer may reimburse employees for reasonable expenses incurred during the calendar year for the purchase of a bicycle as well as for bicycle improvements, repairs, and storage up to a maximum of \$20.00 per month.
- 3. Qualified Bicycle Commuting Month.** For an expense to qualify under this provision, the employee must regularly use a bicycle for the substantial portion of the travel between the employee's residence and place of employment. The new law does not define what is considered substantial. It handles the issue by limiting the benefit to months during which the employee

receives no benefit for transit passes, van pooling, or parking. It also does not define place of employment. For now, we can only assume that it means his/her regular base of employment even though the employee routinely travels to a client's work site.

4. **Calendar-year Expenses.** As for other Section 132 expenses, the benefit for bicycle commuting is a monthly benefit not to exceed \$20.00. The expenses must be incurred during the calendar year in a Qualified Bicycle Commuting Month. The employee will have up to 90 days after the end of the calendar year to submit expenses.
5. **Bona Fide Reimbursement Arrangement.** Pursuant to IRS Regulations (1.132-9 Q&A 16(c)), employers must establish a bona fide reimbursement arrangement for the payment of benefits. To qualify as a bona fide arrangement, the employer must: (1) establish reasonable procedures to ensure that an expense was incurred; (2) must receive substantiation (e.g. copy of a receipt) of the expense within a reasonable period of time; and, (3) the employee must certify the claim at the time it is made. Employers must maintain these records for a reasonable period of time.
6. **Plan Documentation.** Although IRC Section 132 does not require a written plan, it is always our recommendation that employers commit to writing the essential terms of the benefit in order to substantiate the basis for making tax-exempt benefit payments.

Since we do not expect the IRS to provide more detailed guidance at this time, employers who elect to provide this fringe benefit, must apply reasonable rules in its administration and claim substantiation.

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